



Commonwealth of Massachusetts

THE TRIAL COURT

PROBATE AND FAMILY COURT DEPARTMENT

Limited Assistance Representation Pilot Project Hampden and Suffolk Divisions of the Probate and Family Court

Frequently Asked Questions For Judges, Court Personnel and Attorneys:

Q. What is Limited Assistance Representation (LAR) (also known as “unbundling”)?

A. Limited Assistance Representation (LAR) is when an attorney represents or assists a litigant with part, but not all, of his or her legal matter. The attorney and litigant enter into a detailed agreement defining what tasks the attorney will be responsible for and what tasks the litigant will be responsible for. LAR may be practiced in the Hampden and Suffolk Probate and Family Courts for an 18 month pilot project beginning November 1, 2006.

Q. What are the different ways an attorney can help in LAR?

A. One way an attorney can practice LAR is by coaching the litigant outside of court on what the law is and what the rules of procedure are without ever filing an appearance or appearing in court to represent the litigant. The attorney can also draft documents for the litigant to file without filing an appearance or going into court with the litigant but the attorney must write on the document that it was prepared with the assistance of counsel. (This is called “ghostwriting.”) The attorney can also appear in court with the litigant for part of the entire case, for example only a pretrial conference. In this case, the attorney must file a Notice of Limited Appearance in court describing the issue or event the attorney is representing the litigant on. After the completion of that issue or event, the attorney must file a Notice of Withdrawal of Limited Appearance.

Q. Who can use LAR?

A. Any party to a case in either of the two pilot courts can hire an attorney for LAR and the litigant and attorney will decide what tasks each is responsible for completing.

Q. How does a party find a lawyer who will represent him/her on a limited basis?

A. An alphabetical list of qualified attorneys will be maintained in the Registry of Probate and the local bar associations.

Q. How does a lawyer become qualified to assist someone on a limited basis?

A. All lawyers wanting to participate in this pilot project must attend a mandatory training to become qualified. Sessions have been held in Boston, Springfield, and at the Massachusetts Bar Association Family Law Conference in Chatham. Information on future sessions will be posted in the pilot courts and publicized in Lawyer’s Weekly.

Q. How does a lawyer file a notice of limited appearance and withdrawal of limited appearance?

A. Notices of Limited Appearance and Notices of Withdrawal of Limited Appearance will be available in the Registry of Probate at the Hampden and Suffolk Divisions of the Probate and Family Courts. Samples will also be included in the Order being promulgated by the Supreme Judicial Court and with the materials provided at the mandatory training.

Q. Why is Limited Assistance Representation going to be allowed in court?

A. Parties will benefit by having some legal assistance in prosecuting or defending a case. Courts will benefit by having documents prepared properly and issues presented to the court more clearly, thereby saving court time. Attorneys will benefit by being able to help a party for a short time, without being required to remain in a case until completion and will be able to be paid in a timely fashion as part of the specific agreement between the party and attorney. Limited Representation is currently being used successfully in several other jurisdictions, including Alaska, California, Colorado, Florida, Maine, Nevada, New Mexico, Washington and Wyoming.

Q. When can LAR be used?

A. LAR can be used whenever there is a matter pending or to be filed in court and a party does not wish to represent him/herself but does not wish to hire an attorney to represent him/her throughout the entire case.

Q. If an attorney wants to file Notice of Withdrawal of Limited Appearance and the client claims withdrawal is premature or contrary to the attorney/client agreement, what is the role of the Judge in the case?

A. The Judge cannot intercede. It is incumbent on the attorney to draft and execute a clear and unambiguous agreement with the client which defines when the attorney will appear and withdraw. If the client and the attorney disagree concerning their limited representation agreement, they would resolve the matter pursuant to the terms of the agreement.

Q. What is ghostwriting?

A. Ghostwriting is a term used to describe the drafting of documents by attorneys for clients without filing an appearance for the clients. The attorney does not sign his/her name to the document but instead writes, "This document was prepared with the assistance of counsel." This discloses to the court and to the opposing party that an attorney assisted in the drafting of the document but will not appear in court. This disclosure does not constitute an appearance by the attorney and the attorney is not required to identify himself/herself or sign the pleading. The usual ethical and practice rules apply. The attorney drafting the pleading must make reasonable inquiry about the facts and issues raised in the pleading. If there is something patently false, outrageous, etc. on the face of the pleading that is of concern to the Judge, the Judge can require the filing party to divulge the identity of the drafting attorney.

Q. What if the attorney and client agree that the attorney will extend representation beyond the scope of the limited appearance?

A. If the extension of representation is limited to a specific event or issue, the attorney must file another Notice of Limited Appearance describing the items within the extended scope and then file a withdrawal upon completion of the extended scope. If the extension of representation is to represent the client for the entire case, the attorney will enter a general appearance.

Q. Should the Judge look at the attorney-client limited representation agreement?

A. No. The agreement between the attorney and client remains private and confidential just as any other fee agreement between them is.

Q. Who gets served notice of any pleadings once a Notice of Limited Appearance has been filed?

A. The opposing party (or his/her attorney) must serve the client and his/her limited assistance attorney with notice of any pleading relating to the limited appearance issue or event. Any pleading regarding issues outside the scope of the limited appearance should be served only on the client.

Q. What duties does the attorney owe the client when there is limited assistance representation?

A. An attorney must follow all ethical rules and standards of professional responsibility whether providing full or limited representation to the client. The requirements of zealous advocacy, confidentiality, avoiding conflicts of interest, etc. apply.

Q. If one litigant is represented by an attorney in court and the other is not, will the rules of evidence be less strictly adhered to and the expectations of the litigant without an attorney be reduced?

A. No. The rules of evidence and the law should be equally applied to all parties appearing before the court.

Q. Will there be more Frequently Asked Questions handouts available during the course of the pilot project as more questions arise?

A. Yes.